

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2091 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF AGRAWAL BANSILAL H

Versus

MAMLATDAR & ALT (TENANCY)

Appearance:

MS KUSUMBEN M SHAH for Petitioners
MR MA BUKHARI AGP for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 04/08/2000

ORAL JUDGEMENT

1. By means of filing this petition under Article 226 of the Constitution of India, the petitioners who are the heirs and legal representatives of deceased Agrawal Bansilal Haribhakt, have brought under challenge the order dated June 20, 1986 passed by the Deputy Collector,

Palanpur, in Tenancy Revision Case No. 164/85, Annexure 'D', and also the order dated January 25, 1991, passed by the Gujarat Revenue Tribunal, in Revision Application No. TEN.B.A. 854/86, Annexure 'E'.

2. Deceased Bansilal Haribhakt originally belonged to Rajasthan State and was an agriculturist cultivating land in a village near Jaipur. He had migrated to Gujarat about 50 years back and started running a grocery shop at village Iqbalgadh in Palanpur Taluka. After his migration to Gujarat, he had lost his land in Rajasthan and permanently settled in Iqbalgadh. As Bansilal had a large family and could not manage on the income from the grocery shop, sometime in the year 1978-79 he cultivated the land bearing Survey No. 21/1/14 admeasuring 1 acre and 9 gunthas in Iqbalgadh which was belonging to one Patel Bechar Dosji. Bansilal was lawfully cultivating the land belonging to said Bechar Dosji and was paying 1/3 share of the crops. After cultivating the land for about four to five years, deceased Bansilal made an application on April 20, 1982 to the Mamlatdar, Palanpur to the effect that he may be declared to have purchased the land which he was cultivating, under Section 32-O of the Bombay Tenancy and Agricultural Lands Act, 1948 ('the Act' for short hereinafter). Pursuant to the application, the Mamlatdar held an inquiry and recorded statements of various persons including that of deceased Bansilal. During the inquiry it was found that the landlord himself had allowed Bansilal to cultivate the land in question since it was not economical and possible for him to cultivate the land. Therefore, the Mamlatdar after seeking the opinion of the Deputy Collector in the matter, recorded a reasoned order holding said Bansilal to be the deemed purchaser of the land under Section 32-O of the Act. On the question whether a person who was not an agriculturist could become a 'tenant', the Mamlatdar held that after the Amendment Act of 1956 came into force and in view of the change in the definition of 'tenant', any person could become a tenant and it was not necessary that such person should be an agriculturist and, therefore, a person who was not an agriculturist can also become a tenant.

3. The said order was taken in suo motu revision by the Deputy Collector, Palanpur, who examined the definition of 'tenant' as provided in Section 2 (18) of the Act and held that interpretation of the Mamlatdar in this respect i.e., that the tenant need not be an agriculturist, was proper. The Deputy Collector, therefore, withdrew the notice for revision of the Mamlatdar's order and since there was no further appeal

or revision against the said order, according to the petitioners, the said order has become final. Meanwhile, pursuant to the order of the Mamlatdar under Section 30 - O of the Act, the deceased Bansilal had deposited the purchase price fixed by the Mamlatdar in one instalment and obtained a certificate of purchase under Section 30-M of the Act. According to the petitioners, after issuance of the purchase certificate the deceased Bansilal has become the full-fledged owner of the said land with title over the property.

4. In the year 1984 the Mamlatdar & ALT (Tenancy), Deesa had issued notice for inquiry under Section 63 of the Act, in Tenancy Case No.105 of 1984 in respect of the aforesaid proceeding by which deceased Bansilal was declared as a deemed purchaser of the land in question. Deceased Bansilal had appeared before the Mamlatdar & ALT and pointed out that he was declared deemed purchaser under the provisions of Section 32-O of the Act and there was no violation of Section 63 of the Act and thereupon the Mamlatdar & ALT held that as deceased Bansilal was declared tenant under Section 32-O of the Act, the inquiry was required to be dropped. The said order of Mamlatdar & ALT was taken in suo motu revision by the Deputy Collector, Palanpur in Tenancy Revision Case No. 164 of 1985. The Deputy Collector held that when the transfer of the land took place in the year 1982 in favour of deceased Bansilal he was not having agricultural land in any place and to become an agriculturist it was essential to own agricultural land or to obtain permission of the competent authority and as no such permission was obtained by deceased Bansilal, there was violation of provisions of sections 2 (2) and 63 of the Act and the Deputy Collector set aside the earlier order of the Mamlatdar & ALT in Tenancy case No. 105 of 1984 vide order dated June 20, 1986 and directed the authorities to take further action in the matter.

5. Aggrieved thereby deceased Bansilal filed Revision Application No. TEN B.A. 854 of 1986 before the Gujarat Revenue Tribunal. The Tribunal vide order dated January 25, 1991 held that deceased Bansilal was not holding any agricultural land before he came in possession of the land in question and hence the transfer of the land under Section 32-O of the Act was not legal and valid as no permission of the competent authority for such transfer was obtained by the landlord at that time.

6. According to the petitioners, during the pendency of the proceedings before the Revenue Tribunal, Bansilal died on July 14, 1989. However, the petitioners were not

aware that they were required to get themselves impleaded in the proceedings before the Tribunal and hence the learned advocate was not informed about the death of Bansilal. Therefore, the impugned order came to be passed by the Tribunal on January 25, 1991 without heirs being brought on record. The petitioners are the lawful heirs of deceased Bansilal and in fact proceedings under Section 84C of the Act are pending against the petitioners before the Mamlatdar in respect of the same land. The heirs of deceased Bansilal have filed this petition contending that both the orders which are impugned in the petition are illegal, inoperative and not according to law and, therefore, they are liable to be quashed and set aside and prayed to issue a writ of certiorari or any other appropriate writ, order or direction quashing and setting aside the order dated June 20, 1986 passed by Deputy Collector, Palanpur in Tenancy Revision Case No. 164 of 1985 and the order dated January 25, 1991 passed by Gujarat Revenue Tribunal in Revision Application No. TEN B.A. 854/86 whereby the order of the Deputy Collector, Palanpur was confirmed.

7. Though no reply affidavit has been filed by the respondents the petition is contested by them by making oral submissions.

8. I have heard Ms. Kusum M. Shah, learned advocate for the petitioners and Mr. M.A. Bukhari, learned A.G.P. for respondents.

9. It is contended by Ms. Shah that once the order under Section 32-0 of the Act issued in favour of deceased Bansilal became final and the deceased Bansilal became the deemed purchaser that question cannot be reopened after two years in a proceeding under Section 63 of the Act. It is further contended by the learned advocate that since it was not a sale between a purchaser and seller, provisions of Section 63 of the Act will not be made applicable as the deceased Bansilal had become sole owner under the provisions of section 32-0 of the Act. The learned advocate further contended that both the quasi judicial authorities below have committed grave error of law in initiating proceedings under section 63 of the Act since the deceased Bansilal became deemed purchaser by virtue of the provisions of Section 32-0 of the Act. Therefore the learned advocate urged that the petition may be allowed by quashing and setting aside the impugned orders recorded by both the authorities below.

10. Mr. Bukhari, learned A.G.P. supported the orders passed by both the authorities below and contended

that there is no manner of doubt that the deceased was not a tenant since he was not holding any agricultural land prior to becoming the deemed purchaser under section 32-0 of the Act and, therefore, even for becoming a tenant under Section 32-0 of the Act the person concerned must be holding agricultural land as per the provisions of the Act. He, therefore, contended that the orders passed by both the quasi judicial authorities below are in accordance with law and do not require any interference while exercising powers in a petition filed under Article 227 of the Constitution since the High Court cannot reappreciate the primary or perceptible facts found by the fact finding authority under the statute and the scope of the High Court under Article 227 of the Constitution is very limited and confined only to correcting any error of jurisdiction committed by the Tribunal. It is a review of the decision making process and not of the decision itself and hence the High Court must confine itself to correcting any error of jurisdiction committed by the Tribunal and it cannot assume suo motu jurisdiction and correct every error assumed to have been committed by the Tribunal. He, therefore, urges to dismiss the petition by confirming the impugned orders under challenge in the petition.

11. I have given my anxious considerate thought to the rival contentions canvassed by the learned advocates for the parties and also perused the impugned orders annexed to the petition so also the relevant proposition of law as envisaged under the Act. In the facts and circumstances of the case, the only question which falls for determination in this case is as to whether the tenant cultivating personally the land belonging to the landlord is entitled to be declared as deemed purchaser under Section 32 - 0 of the Act notwithstanding the fact that he is not holding any agricultural land which creates a bar in the transfer of land to a non-agriculturist by virtue of Section 63 of the Act.

12. To answer the aforesaid question, let us have a look at the relevant provisions of the Act. Section 32-0 of the Act reads as under:

"320. (1) In respect of any tenancy created after the tillers' day, notwithstanding any agreement or usage to the contrary, a tenant cultivating personally shall be deemed to have purchased on the date of expiry of one year from the commencement of such tenancy from the landlord the land held by him or such part thereof as will raise the holding of the tenant

to the ceiling area.

- (2) The provisions of sections 32 to 32N (both inclusive) and of sections 32P, 32Q and 32R in so far as they may be applicable shall apply to the purchase of the land by a tenant under sub-section (1)."

The word 'agriculturist' is defined in section 2 (2) of the Act which reads as under:

"2 (2). "Agriculturist" means a person who cultivates land personally".

The word 'tenant' is defined in section 2 (18) of the Act which reads thus:

"2 (18) "tenant" means a person who holds land on lease and includes -

- (a) a person who is deemed to be a tenant under section 4;
- (b) a person who is a protected tenant; and
- (c) a person who is a permanent tenant;
- (d) a person who, after the surrender of his tenancy in respect of any land at any time after the appointed day but before the specified date has continued, or is deemed to have continued, to remain in actual possession, with or without the consent of the landlord, of such land till the specified date"

and the word "landlord" shall be constructed accordingly."

It would be appropriate to refer to Section 4 of the Act which reads as follows:

"4. A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not

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- (a) a member of the owner's family; or
- (b) a servant on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under the personal supervision of the owner or any member of the owner's family, or
- (c) a mortgagee in possession."

13. In light of the aforesaid statutory provisions of

the Act if we examine the order passed by the Mamlatdar, Palanpur, in Tenancy Case No. 351 of 1982 recorded on November 25, 1982 it can be seen that it was a full-fledged inquiry made by the Mamlatdar after recording statement of deceased Bansilal, landlord Bechar Dosji and Talati of village Iqbalgadh and during the said inquiry it was found by the Mamlatdar that deceased Bansilal was cultivating the said land on crop share basis. Besides this it was also held by the Mamlatdar that deceased Bansilal was not an agriculturist since he was not possessing agricultural lands prior to cultivating the said land and before declaring Bansilal as a tenant he sought opinion of the Deputy Collector and thereafter recorded the said order. By the said order it was also held by him that after the Amendment Act of 1956 came into force and considering the definition of 'tenant' any person can become a tenant as it was not necessary for the said person to be an agriculturist. Not only that this order was also taken in suo motu revision by the Deputy Collector and Deputy Collector after considering the definition of 'tenant' as envisaged under Section 2 (18) of the Act held that the interpretation of the Mamlatdar on this point i.e., 'tenant' need not be an agriculturist, was correct and thereafter the Deputy Collector withdrew the notice for revision of the order of the Mamlatdar. The matter does not rest here. The said order has become final as no appeal or revision was preferred against the said order.

14. After two years, the Mamlatdar & ALT, Deesa issued notice under the provisions of section 63 of the Act in respect of the aforesaid proceedings whereby deceased Bansilal was declared deemed purchaser of the land in question. The Mamlatdar also heard deceased Bansilal and since there was no violation of provisions of Section 63 of the Act, the Mamlatdar & ALT held that as deceased Bansilal was declared tenant under Section 32 - O of the Act, the chapter was required to be closed and accordingly it was closed. Thereafter the Deputy Collector took up the said matter in suo motu revision and decided the matter against deceased Bansilal since he had not obtained permission as envisaged under section 63 of the Act.

15. Now let us examine the scope of Section 63 of the Act. It would, therefore, be appropriate to refer to section 63 of the Act which reads as under:

"63. (1) Save as provided in this Act,--

(a) no sale (including sales in execution of a

decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift, exchange or lease of any land or interest therein, or

(b) no mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee, or

(c) no agreement made by an instrument in writing for the sale, gift, exchange, lease or mortgage of any land or interest therein,

shall be valid in favour of a person who is not an agriculturist or who being an agriculturist cultivates personally land not less than the ceiling area whether as an owner or tenant or partly as owner and partly as tenant or who is not an agricultural labourer:

Provided that the Collector or an officer authorized by the State Government in this behalf may grant permission for such sale, gift, exchange, lease or mortgage, or for such agreement on such conditions as may be prescribed.

Provided further that no such permission shall be granted, where land is being sold to a person who is not an agriculturist for agricultural purpose, if the annual income of such person from other sources exceeds five thousand rupees.

xxxxx xxxxx xxxxx
xxxxx xxxxx xxxxx"

16. On correct interpretation of the statutory provisions of Section 63 of the Act, it is clear that sale, gift, exchange or lease of agricultural land shall not be valid in favour of a person who is not an agriculturist without obtaining permission of the Collector or an officer authorized by the State Government in this behalf. To put it differently, there is a clear embargo in transferring agricultural lands in favour of a non-agriculturist without prior permission of the Collector.

17. Now the question which falls for consideration is as to whether the purchase of land under Section 32 -O of the Act can be said to be a transfer of land under

Section 63 of the Act? On having careful scrutiny of the relevant provisions of law envisaged under the Act, I am of the opinion that both the proceedings are distinct. Proceedings under section 32-0 of the Act stand altogether on a different footing wherein the only requirement is that the tenant who was cultivating personally the land of the landlord shall be deemed to have purchased the land on the date of expiry of one year from the commencement of such tenancy. Now so far as the definition of 'tenant' is concerned, as per section 2 (18) of the Act, tenant means, a person who holds the land on lease and includes person who is deemed to be a tenant under Section 4 of the Act. As per section 4 of the Act, a person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not a member of the owner's family or a servant on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under the personal supervision of the owner or any member of the owner's family or a mortgagee in possession. The Mamlatdar, Palanpur, after considering the relevant provisions of law declared the deceased Bansilal as tenant and granted certificate accordingly and the said certificate became final after the Deputy Collector affirmed the said order in suo motu revision.

18. Now so far as the impugned orders are concerned, both the authorities below have held that the transfer of land under Section 32-0 of the Act is contrary to section 63 of the Act and, therefore, the said order by which deceased Bansilal had become deemed purchaser after obtaining certificate in his favour on payment of full price was cancelled.

19. So far as section 63 of the Act is concerned, as observed earlier, it puts restriction to transfer the land to non-agriculturist without prior permission of the Collector. In this case there was no case of transfer of property in favour of the deceased Bansilal. Therefore, in my view, the order dated June 20, 1986 recorded by the Deputy Collector, Palanpur in Tenancy Revision Case No. 164 of 1985 and confirmed in Revision Application No. TEN B.A. No. 854 of 1986 vide order dated January 25, 1991 by the Gujarat Revenue Tribunal are required to be quashed and set aside as they are contrary to the provisions of the Act since the deceased Bansilal had become deemed purchaser under the provisions of Section 32 -0 of the Act and the said order has become final.

20. For the foregoing reasons, the petition succeeds

and accordingly it is allowed. Impugned orders are quashed and set aside. Rule is made absolute with no order as to costs.

4.8.2000. (A.M. Kapadia, J.)

(karan)